



OFFICE OF THE DEPUTY COMMISSIONER - LEGAL MATTERS

LEGAL BUREAU BULLETIN

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I. SUBJECT:

**ENFORCEMENT ACTION REGARDING
PAWNBROKERS AND SECOND-HAND
DEALERS**

II. QUESTION:

What are the reporting and recordkeeping requirements for pawnbrokers and second-hand dealers in New York City? And what are the Department's rights and duties in regard to these businesses?

III. ANSWER:

Local law requires pawnbrokers and second-hand dealers to keep detailed records of all transactions, and these records must be made available for inspection by law enforcement. The Department is required to make regular, periodic administrative inspections of records and property to ensure compliance with these recordkeeping and reporting requirements.

IV. DISCUSSION:

A. Introduction

Local Law 149 of 2013 was enacted to make several amendments to Administrative Code Sections 20-267, 20-273, and 20-277, to mandate electronic recordkeeping by pawnbrokers and certain second-hand dealers in New York City. Prior to the law's implementation, several stakeholders in the industry sought an injunction against the enforcement of the new requirements.¹ Following the resolution of this litigation, all licensed pawnbrokers and second-hand dealers in New York City have been notified that enforcement of the recordkeeping requirements will commence. MOS will adhere to procedures described in Patrol Guide procedure 214-38, "Inspections of Pawnbrokers and Second-Hand Dealers" (note that Patrol Guide procedure 214-38, as amended on August 1, 2013, does not reflect the changes in recordkeeping requirements. An updated version of this procedure will be issued in 2017 to

¹ Collateral Loan Brokers Ass'n of N.Y., Inc. v. City of N.Y., 46 N.Y.S.3d 600 (1st Dep't 2017).

reflect the content of this Bulletin). This Bulletin has been prepared to remind and instruct Members of the Service of their duties and responsibilities under the law in regard to these businesses.²

1. Licensing and Enforcement

Pawnbrokers and second-hand dealers in New York City are licensed by the Department of Consumer Affairs (DCA) and their record-keeping practices are monitored by both DCA and the Police Department. Both agencies are empowered to take enforcement under state and local law.³

2. Definitions

a. Second-Hand Dealers

A second-hand dealer (or “dealer in second-hand articles”) is “any person who, in any way or as a principal broker or agent deals in the purchase or sale of second-hand articles of whatever nature, or accepts or receives second-hand articles as returns of merchandise or in exchange for or for credits on any other articles or merchandise.”⁴ Second-hand dealers may also engage in the purchase or sale of items comprised of precious metals, or may melt such items down to sell the metals.

b. Pawnbrokers

A pawnbroker (or “collateral loan broker”) is “a person or business engaged in the loaning of money on deposit or pledge of personal property, or the purchasing of personal property on the condition of selling it back at a stipulated price.”⁵

B. Recordkeeping Requirements

Prior to the enacting of Local Law 149 of 2013, the Administrative Code, the Rules of the City of New York, and the General Business Law imposed various requirements on pawnbrokers and second-hand dealers in regard to the keeping of written records and the presentation of those records for inspection by law enforcement.⁶ Generally, these businesses are required to make comprehensive entries recording each transaction in a “Second-Hand Article Store Log,” that is issued to each business by the NYPD. However, there are also recordkeeping requirements that are particular to either pawnbrokers or second-hand dealers.

1. LeadsOnline

Local Law 149 of 2013 has designated LeadsOnline, a confidential Internet-based reporting system, as the electronic repository into which pawnbrokers and second-hand dealers will record their inventory and transactions. Pawnbrokers and certain second-hand dealers are now mandated to upload transaction data to LeadsOnline each day (see below for the differing requirements). The

² Please note that the contents and directives provided in this Bulletin supersede those contained in DCLM # 1312/98 (LB # 1033/98), also known as “The Grasso memo.”

³ See General Business Law Section 45; Administrative Code Sections 20-275 and 20-277.

⁴ Administrative Code Section 20-264(a)(1) and (2).

⁵ Patrol Guide 214-38

⁶ *Id.*

electronic records must be uploaded to LeadsOnline no later than the day of the transaction, and must be retained for a period of at least six (6) years. Additionally, should a business engage in no transactions on a given day, that business must still upload a negative report.

2. Pawnbroker Recordkeeping Requirements

Administrative Code Section 20-277 requires those individuals engaged in a pawnbroker business to maintain written records of each transaction. To meet this requirement, pawnbrokers are issued the Second-Hand Article Store Log and required to make comprehensive entries. The Log must contain information that specifically identifies the sellers or buyers of pawned property; including name, address, phone number, date of birth, gender, and race or ethnicity. Each transaction must be recorded in detail as well; including the date, time and location of transaction; a description of each article pawned; identifying numbers or distinguishing marks on the item; and a description of each article redeemed.

Local Law 149 mandates pawnbrokers to also upload electronic records of all transactions to LeadsOnline. However, the electronic record only needs to contain the date, time, and location of the transaction as well as an accurate description of each item (including identifying marks, serial numbers, manufacturer, IMEI numbers, etc.) and one or more digital photographs of each item. There is no requirement under the law that pawnbrokers upload customer pedigree information into LeadsOnline. They must, however retain this information in the written "Second-Hand Article Store Log."

Although there is no legal requirement for pawnbrokers to include customer identification and pedigree information as part of LeadsOnline transaction entries, the Department has notified these businesses that, should they voluntarily include this information, in their entries for all items and transactions, on LeadsOnline, no written recordkeeping will be required, and no enforcement action will be taken against them in regard to the keeping and presentation of written records.

3. Second-Hand Dealer Recordkeeping Requirements

Administrative Code Section 20-273 requires second-hand dealers to maintain written records of each transaction they conduct similar to those that are required of pawnbrokers. Second-hand dealers also use an NYPD-issued "Second-Hand Article Store Log," to meet this requirement.

As a result of Local Law 149, however, second-hand dealers that deal in certain types of property: precious metals (items that are composed in whole or part by precious metals); electrical appliances (excluding kitchen appliances); electronic equipment (including cellphones and smartphones), computers or their component parts, are mandated to create electronic records of transactions involving these types of property using LeadsOnline and they are subject to applicable upload and record retention requirements. The electronic record must include the following information for each transaction: date, time and location of the transaction, as well as an accurate description of each article, (including identifying marks, serial numbers, manufacturer, IMEI numbers, etc.) and one or more digital photographs of the article. Additionally, second-hand dealers dealing in used motor vehicles must include in their written records the VIN for any motor vehicle or motor sold or otherwise disposed of, as well as the date of birth of the person removing the property, his or her driver's license with the state of issuance, and the destination to which the vehicle or motor is being removed. Second-hand dealers who do not deal in the above-named types of property are not required to make electronic records of transactions, but will continue to maintain written records.

Similar to pawnbrokers, second-hand dealers that are subject to electronic reporting are not required under the law to upload customer pedigree information into LeadsOnline, however, they must retain this information in the written “Second-Hand Article Store Log.” However, although there is no legal requirement for this group of second-hand dealers to include customer identification and pedigree information as part of LeadsOnline transaction entries, the Department has notified these businesses that, should they voluntarily include this information on LeadsOnline, no written recordkeeping will be required, and no enforcement action will be taken against them in regard to the keeping and presentation of written records.

Additionally, those second-hand dealers who do not deal in the types of property discussed above, and are thus not required to upload transaction data to LeadsOnline, will be exempted from the requirements regarding written recordkeeping and presentation should they voluntarily upload all transaction data (including customer identification and pedigree information) electronically, as described above.

C. Inspections of Pawnbroker and Second-Hand Dealer Businesses

Members of the Service, as well as inspectors from the Department of Consumer Affairs, may conduct inspections of property and/or records retained by pawnbroker and second-hand dealer businesses under two discrete sets of circumstances. On one hand, MOS are required, according to Patrol Guide procedure 214-38 (as updated in 2017), to conduct systematic, administrative inspections, for the purpose of ensuring that the business is being operated according to the governing rules. On the other hand, MOS may, in the course of conducting an investigation, demand to examine an item that may have been stolen and is in the possession of a second-hand dealer.

These two types of inspections, although they sound similar on the surface, are not interchangeable, either in purpose or procedure. Under no circumstances should a MOS conduct an administrative inspection with the unstated purpose of conducting a broad search for stolen property (a “fishing expedition”). Conversely, if, for example, a second-hand dealer will not turn over a specific item known to be stolen, MOS may not then conduct a purported “administrative” inspection to search for the item – this is an unlawful warrantless search. MOS should be guided by the section below, entitled, “Investigative Inspections.”

1. Administrative Inspections

Patrol Guide procedure 214-38 requires Members of the Service to conduct systematic inspections of pawnbroker and second-hand dealer businesses to “ensure compliance with the record-keeping and reporting requirements.”⁷ These administrative inspections are only intended as an exercise of regulatory authority over the industry and may not be used solely for the purpose of uncovering criminality.⁸ To withstand Constitutional challenge, inspections must be conducted in a manner that is necessary to further the substantial government interest in protecting the interests of those who pawn property.⁹ Thus, the inspections must be conducted on

⁷ 38 RCNY 21-11(a)

⁸ Collateral Loan Brokers Ass’n of NY Inc. at 604.

⁹ *Id.* at 605.

an ongoing, regular basis and must be documented via a DD5. By rule, a member of the Department must visit each pawnbroker and second-hand dealer business within the confines of their command "at least once every ten days to obtain a copy of the records" from the Log, provided that the business is not uploading all information contained in the Log onto LeadsOnline.¹⁰ Moreover, the administrative inspections must occur "[no] less often than once per quarter during the calendar year."¹¹ These guidelines ensure that such inspections are necessary to further the objective of enforcing the rules and regulations pertaining to such businesses.

To ensure that the Department adheres to the regulatory role it plays in the pawnbroker/second-hand dealer industry, P.G. 214-38 requires each precinct's Special Operations Lieutenant, as well as a designated alternate supervisor, to maintain a list of all pawnbroker and second-hand dealer businesses located within the bounds of their command, such list is to be divided between those that upload records electronically and those that maintain written records. Each business on this list is subject to mandated administrative inspections.

When conducting an inspection, MOS must request to see the last twenty (20) articles "purchased or received in pledge" by the dealer, that are still physically present. The pawnbroker/second-hand dealer must produce the items.¹² The inspecting MOS will compare the actual items to the descriptions that are either listed in the written Second-Hand Articles Store Log, or on LeadsOnline, or both.¹³ The entry in the record must be reviewed "for completeness, accuracy and legibility."¹⁴ MOS should be mindful of that fact that an administrative inspection is just that - an *inspection* of the business records and certain individual items and is not an inspection of the premises, storage areas, offices, or other parts of the physical location. When conducting these inspections, MOS should remain in the area of the business that is open to the public and direct dealers to present the required items and records for inspection at the customer counter, to avoid the appearance that they are conducting a warrantless search of the dealer location.

Administrative inspections do not confer blanket authorization to search the business premises. Failure to comply with the administrative requirements of a pawnbroker/second-hand dealer business does not authorize MOS to conduct a physical search of the premises. If, during the course of a routine, administrative inspection, evidence of criminality is observed in the records kept by the business (or in the physical location), absent an acknowledged exception to the search warrant requirement (e.g. "plain view"). MOS should immediately secure the scene and obtain a search warrant.

2. Investigative Inspections

By law, any second-hand dealer who comes into possession of an item that matches the description (or part of the description) of any article "advertised in any newspaper printed in the

¹⁰ 38 RCNY 21-10(b); 38 RCNY 21-10(c).

¹¹ 38 RCNY 21-11(a).

¹² 38 RCNY 21-11(a)(1).

¹³ 38 RCNY 21-11(a)(2).

¹⁴ 38 RCNY 21-11(a)(3).

city as having been lost or stolen,” that dealer must give the Department the relevant information in writing, upon receiving written or oral notice to do so.¹⁵ Moreover, any second-hand dealer who has or receives any goods that are lost or stolen, “or alleged or supposed to have been lost or stolen,” must present the goods to any police officer on demand.¹⁶

D. Enforcement Options¹⁷

During the course of conducting criminal investigations or administrative inspections, MOS have encountered varying degrees of resistance from owners and employees of pawnbroker or second-hand dealer businesses. Pawnbrokers, second-hand dealers, or the employees of such businesses, who refuse to comply with any aspect of these rules may be subject to civil and criminal penalties. Any secondhand-dealer (or an employee) who violates any of the rules regarding operation of a second-hand dealer business is guilty of a Class A Misdemeanor, for a first offense, and, upon conviction, is also subject to a \$500 fine (subsequent convictions subject the violator to imprisonment for at least 15 days and/or a \$1000 fine).¹⁸ Any pawnbroker (or employee) who violates the applicable rules may be punished by a fine of between \$25 and \$500, or by imprisonment for not more than 15 days, as well as a civil penalty of \$100 (to be recovered in a civil action).¹⁹ However, any business that operates solely as a pawnbroker (or employee) who violates the governing provisions under the General Business Law is guilty of a misdemeanor, punishable by a fine up to \$500, or imprisonment for up to a year, or both.²⁰ Thus, following the letter of these rules is not optional or voluntary – it is legally mandated. In general, during an administrative inspection, should the dealer fail or refuse to comply with the requirements of keeping and presenting records, as well as presentation of requested articles, enforcement should consist of the remedies under the Administrative Code. The following scenarios that MOS have encountered illustrate this concept:

- A second-hand dealer who is required to keep and present written records refuses to present the written Log for inspection. In this situation, MOS should know that those businesses that voluntarily upload all transaction information to LeadsOnline are, by authority of the Police Commissioner, exempt from inspection of written documentation. However, should such businesses elect to not upload customer pedigree information; they would then be subject to the written recordkeeping and inspection requirements. Thus, the dealer who refuses to present the Log for inspection would be subject to summons under the Administrative Code. MOS should issue two summonses: one for “Failure to Maintain Written Records” (Administrative Code Section 20-273(a)); and one for “Failure to Present Records for Inspection by a Police Officer” (Administrative Code Section 20-273(e)). Please note that this does not trigger the right to inspect the premises.

¹⁵ Administrative Code 20-272(a)

¹⁶ Administrative Code 20-272(b)

¹⁷ The Department of Consumer Affairs issues pawnbroker licenses and second-hand dealer licenses. Additionally, most, but not all, pawnbroker license holders also hold second-hand dealer licenses. Prior to taking enforcement action, MOS should determine which type of license the business holds. DCA may be contacted to ascertain this information.

¹⁸ Administrative Code Section 20-275.

¹⁹ Administrative Code Section 20-106(a).

²⁰ General Business Law Section 54.

- A second-hand dealer presents the required written or electronic records, however the business refuses to present the most recent 20 items it has obtained. MOS should issue a summons for “Failure to Present Records for Inspection by a Police Officer” (Administrative Code Section 20-273(e)). Mere refusal to comply with this aspect of an administrative inspection does not trigger the right for officers to physically search the premises.
- A second-hand dealer who solely maintains electronic records and elects to upload all of the transaction data including pedigree information fails to include pedigree information. MOS are directed to respond to the location and demand to inspect the corresponding written records for the pedigree information. If the business owner/employee refuses to produce the written records, MOS should issue two summonses: one for “Failure to Maintain Written Records” (Administrative Code Section 20-273(a)); and one for “Failure to Present Records for Inspection by a Police Officer” (Administrative Code Section 20-273(e)). (MOS should know that those businesses that voluntarily upload all transaction information to LeadsOnline are, by authority of the Police Commissioner, exempt from inspection of written documentation.) Please note that this does not trigger the right to inspect the premises.
- During an administrative check of LeadsOnline, MOS observe that a particular business has not recorded any transactions for several days. In such instances, businesses are required to make a negative report each day on LeadsOnline. MOS will then respond to the business and demand to see the last 20 items and the corresponding records to determine what entries were required: if there are no transactions during the time period, MOS should instruct the business of the requirement to make negative reports, and may issue two summonses (one for “Failure to Maintain Written Records” (Administrative Code Section 20-273(a)); and one for “Failure to Present Records for Inspection by a Police Officer” (Administrative Code Section 20-273(e)). Please note that this does not trigger the right to inspect the premises.
- A pawnbroker/second-hand dealer business habitually and repeatedly refuses to comply with the requirements of administrative inspection. MOS are directed to contact the Legal Bureau for guidance/direction. Such business owners/employees may be subject to arrest. Additionally, MOS may be directed to contact the Department of Consumer Affairs to take action against the business, such as terminating the business license or refusing to renew the license at the end of its term.

On the other hand, if MOS seek specific items pursuant to a criminal investigation, more stringent remedies may be warranted. Specific examples are detailed below:

- During the course of investigating the theft of a laptop with a distinctive marking, the investigator located a matching item on LeadsOnline. When the investigator visited the dealer and requested to see the laptop, the dealer refused to present it or to acknowledge possession of it. In this situation, the dealer’s behavior and refusal may be an indication

of criminality. MOS should secure the scene and apply for a search warrant for the laptop. The owner/employee is subject to arrest for Criminal Possession of Stolen Property,²¹ Obstructing Governmental Administration, and Administrative Code Section 20-272(a)²² or (b).²³

- During the course of investigating the theft of a laptop with a distinctive marking, the investigator locates a matching item on LeadsOnline. When the investigator visits the dealer and requested to see the laptop, the dealer acknowledges possession of the item but refuses to relinquish it. In this scenario, MOS should remind the dealer that he is required, by law (see Footnote 22), to exhibit any item or article that has been lost or stolen or alleged to be lost or stolen. Failure to comply with the rules subjects this employee to arrest for Criminal Possession of Stolen Property, Obstructing Governmental Administration, and Administrative Code Section 20-272(b). Additionally, MOS should secure the scene and obtain a search warrant.

E. CONCLUSION

The law authorizes and requires the Department to conduct systematic administrative inspections of the records kept by pawnbroker and second-hand dealer businesses. The Department has enacted Patrol Guide Procedure 214-38 to guide MOS on the practical aspects of conducting the inspections. Members of the Service are encouraged to call the Legal Bureau at (646) 610-5400 with any questions about the content of this Bulletin.

²¹ Penal Law Section 165.40, 165.45, 165.50, 165.52, and 165.54, "Criminal Possession of Stolen Property," require that the perpetrator "knowingly" possess stolen property. Thus, if the investigating MOS has made the business representative aware that an item known to be in the business's possession is stolen, that representative "knowingly" possesses the item. Additionally, it is presumed (as per Penal Law 165.55), that a pawnbroker/second-hand dealer knows an item is stolen if that business has not "ascertained by reasonable inquiry" that the person selling/pawning the item has a legal right to possess the item.

²² Subsection (a) mandates that second-hand dealer businesses, when observing via a written advertisement that an item is lost or stolen, and then coming into possession of the item, they must notify the Police Department. This section only applies to second-hand dealers and not to pawnbrokers.

²³ Subsection (b) mandates that second-hand dealers who possess or receive any item that has been lost or stolen, or is "alleged or supposed" to have been lost or stolen, must present the item at the demand of a Police Officer. This section only applies to second-hand dealers and not to pawnbrokers.